Crl.A. 379/2001
BEFORE
HON'BLE MR JUSTICE D BISWAS
HON'BLE MR JUSTICE HRISHIKESH ROY

This appeal is directed against the judgment dated 31.5.2001 passed by the learned Sessions Judge, Kokrajhar in Sessions Case No.2 of 1997. The learned Sessions Judge tried the appellants under Sections 448/148/325 and Sections 302/34 I.P.C. On conclusion of trial, accused Ajit Ali, Md. Mazid Ali Sk. and Md. Baktar Ali have been convicted and sentenced to imprisonment for life and also to pay a fine of Rs.2,000/-, in default of payment to another six months under Sections 302/34 IPC. All the three accused persons have also been convicted under Section 325 IPC and sentenced to rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default to further imprisonment for three months. Other two accused persons, namely Musstt. Malika Bibi and Musstt. Jarina Bibi were acquitted. Being aggrieved thereby, the convict Md. Ajit Ali, Md. Mazid Ali Sk. and Baktar Ali have preferred this appeal on various grounds set forth in the memorandum.

2. P.W.1, Md. Narul Haque lodged an ejahar before the in-charge of Fakiragram Police Station on 19.3.1995 alleging that on that day around 7 O'clock in the morning the accused persons, namely Md. Ajit Ali, Md. Mazid Ali Sk., Baktar Ali, Musstt. Malika Bibi and Musstt. Jarina Bibi being armed with daos, lathis and spears trespassed in the house compound of his brother Md. Nur Mahammad Seikh and caused injuries on his person.

3. On receipt of the aforesaid ejahar, Fakiragram P.S. Case No.27 of 1995 was registered. P.W.6, Shri Narakanta Koch, Inspector of Police was entrusted with the investigation. Meanwhile, the injured succumbed at Kokrajhar Civil Hospital. The I.O. visited the place of occurrence, prepared a sketch map, shifted the injured persons to the hospital, prepared inquest report, seized incriminating materials including split bamboo from the place of occurrence. He also recorded the statement of witnesses and eventually on completion of investigation, submitted charge sheet against the above named five accused persons under various provisions of I.P.C.

4. On commitment, the learned Sessions Judge framed charges against all the five accused persons under Sections 148/448/325/302/34 IPC. The accused persons, on being explained, denied the charges and claimed to be tried. The learned Sessions Judge, during the course of trial, examined eight witnesses produced by the prosecution including the medical officers and the investigating officers, examined the accused persons under Sections 313 Cr.P.C. and after hearing argument returned the verdict of guilt convicting and sentencing the accused persons as stated herein before.

5. We have heard Mr. A.Sharif, the learned counsel for the appellants and Mr. K.Munir, the learned Public Prosecutor for the respondent State.

6. Of the eight prosecution witnesses, P.Ws. 3 and 7 are medical officers and P.Ws. 6 and 8 are investigating officers. The prosecution case is based upon the evidence of P.Ws. 1, 2, 4 and 5. Before the evidence of the witnesses of occurrence is taken up for consideration, we would like to place herein below the evidence of the medical officers. P.W.7, Dr. Paresh Kalita who performed the post mortem examination on the dead body of the deceased on 19.3.1995. The witness found the following injuries on the dead body :-

The dead body was stout not de composed. Multiple laceratons of scalp especially on right side and oozing of blood through right ear were there. Also multiple bruise and abrasions over both upper limbs and head and neck region.
There were fractures of tabular bones of cranium. Membrances of the brain were haemorrhagic. Cranial Cavity is filled with blood.
Commutated fracturte of right armbones.
Chest wall, lung, pericardium healthy.
Organ of abdominal cavity healthy.
Organ of generation are also healthy.

7. In the opinion of P.W.7, the death was caused due to shock and hemorrhag

e as a result of head injury caused by blunt and heavy object. There is no state ment by P.W.7 that the injury sustained by the deceased was sufficient to cause death in ordinary course of nature. Exbt.3, the inquest report also indicates th at the deceased had sustained three injuries on his head. The evidence of P.W.7 read with the inquest report establishes that Noor Mohammad succumbed to the ant emortem
injuries caused on his person as alleged by the prosecution.

8. P.W.3, Dr. Rezaul Karim on the same date examined Musstt Nur Nehar, Jul Hussain and Fulbhan Bibi. He found simple injuries on the person of all the thre e persons caused by blunt weapon. The evidence of this witness proved the fact t hat the witnesses also sustained some minor injuries.

9. P.W.1, Md. Nurul Haque is the younger brother of the deceased. He appear s to be a reported witness. In his evidence he stated that his youngest son Amdu l Hazue informed him that Noor Mohammad had been assaulted. On receipt of the in formation, he went to the house of Nur Nesa, the daughter of Noor Mohammad where he found Noor Mohammad lying on the ground with injuries on the head and arm. H e also noticed injuries on the person of Nur Nesa. The witness was reported by N ur Nesa, Julu Hussain and Phulaban that the accused Md. Ajit Ali, Md. Mazid Ali Sk., Baktar Ali, Musstt. Malika Bibi and Musstt. Jarina Bibi had assaulted Noor Mohammad with lathi, spear , rod and dao. The evidence of this witness is based on the reports of other witnesses and, therefore, his evidence cannot be determi native of the issue at had except the fact that he had seen Noor Mohammad in an injured stage.

10. P.W.2, Mustt Nur Nehar is the daughter of the deceased. In her evidence she stated that on the date of occurrence at 7 a.m. her father Noor Mohammad cam e to her house and asked for milk. Accused Ajit Ali then stabbed her father belo w the navel with a piece of pointed bamboo whereupon Noor Mohammad fell down on the ground. Accused Baktar then pressed upon her father against the ground and A jit Ali and Mazid Ali started beating her father with batten and pointed bamboo. The witness along with her mother and brother tried to resist the accused perso ns, they were assaulted by Mallika and Jarina. She further stated that her broth er Julu was also assaulted by the accused persons. She further stated that in th e meanwhile, P.W.1, Nurul Haque arrived at the place of occurrence and the accus ed persons, who had already left the place came back and again assaulted her fat her.

11. From P.W.2, we find positive evidence against Ajit Ali, Md. Majid Ali Sk . and Baktar Ali in assaulting her father and that all the accused persons had a lso beaten her, her mother and brother. The contradictions suggested to this wit ness during the course of cross-examination and proved by the investigating offi cer do not erode her credibility in so far as her evidence of assault against th e accused persons are concerned. But her claim that all the witnesses also susta ined injuries suggests that the act of assault was not unilateral and members of both the parties appear to have played some role at the time of occurrence.

12. The evidences of P.Ws. 1 and 2 are supported by P.W.4, Md. Hussain Ali, son-in-law of the deceased, who had in clear terms stated that he saw accused A jit Ali and Md. Majid Ali assaulting his father-in-law with lathi and batten. Th is witness further claimed that he was assaulted by the accused persons.

13. P.W.6, Shri Narakanta Koch, the investigating officer proved some contra dictions with regard to the statement of P.W.4. But having regard to the nature of evidence adduced by P.Ws. 1 and 2 as well as this witness, the contradictions cannot have any overriding effect.

14. P.W.5, Jul Hussain is the son of the deceased Noor Mohammad. In his evid ence he has categorically indicted accused Ajit Ali and Md. Majid Ali Sk. as the assailants of his father. He also implicated Baktar Ali for having pressed his father against the ground to facilitate assault by other accused persons.

15. A combined reading of the evidence of P.Ws. 1, 2, 4 and 5 makes a case f or conviction of the accused persons for having assaulted Noor Mohammad. The evi dentiary value of the statements of these witnesses could not be demolished by d efence during the course of cross-examination. We have, therefore, no hesitation in upholding the decision of the learned Sessions Judge to the extent it relate

s to the involvement of the accused persons in the alleged crime.

16. Mr. Sharif, learned counsel for the appellants submitted that the occurrence took place in the morning hours on 19.3.1995. The injured was initially taken to Pratapgarh by a buffalo cart and from there to a hospital at Fakiragram by push cart. Then he was taken in a Car to Kokrajhar Civil Hospital for treatment. A lot of time was wasted in providing medical treatment to the injured and this must have resulted in deterioration of the condition of the injured, who despite treatment at Kokrajhar Civil Hospital succumbed to the injuries on the same day. Timely treatment given to the injured might have saved his life. After having a look into the circumstances available on record, we agree with Mr. Sharif that if timely medical aid could provided, the life of the injured Noor Mohammed perhaps could be saved and this view stands augmented by the evidence of the medical officer, P.W.7, who did not say that the injuries caused were sufficient in ordinary course of nature to cause death. The evidence on record further disclose that the accused persons are otherwise very close to the prosecution witnesses and there is no deep seated enmity between the parties for which the accused persons could have planned to eliminate Noor Mohammed altogether. The entire episode happened all on a sudden and apparently without any element of premeditation/ intention to cause death of Noor Mohammed.

17. In the given circumstances, we think that it would be appropriate to modify the conviction for a lesser degree of sentence. Accordingly, in partial modification of the judgment, we convict the accused Md. Ajit Ali, Md. Mazid Ali Sk. and Baktar Ali under Section 304 Part-II read with Section 34 IPC and on such conviction, sentence each of them to the period already spent in custody. It may be mentioned here that all the three persons have been in custody since 31.5.2001.

18. The appeal accordingly stands disposed of with modification as indicated above. The accused persons be set at liberty forthwith.